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FIRST GENERAL COUNSEL'S REPORT

MUR: 6437

DATE COMPLAINT FILED: November 30, 2010

DATE OF NOTIFICATION: December 7, 2010

LAST RESPONSE RECEIVED: January 26, 2011

DATE ACTIVATED: February 15, 2011

EXPIRATION OF SOL: October 13, 2015 (earliest)
November 2, 2015 (latest)

COMPLAINANT:

Joseph Chmielarz

RESPONDENTS:

Karen Harrington
Karen Harrington for Congress and
Karen Harrington, in her official capacity
as treasurer¹

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 439a
2 U.S.C. § 441b
11 C.F.R. § 100.52
11 C.F.R. § 113.1(g)
11 C.F.R. § 113.2(e)
11 C.F.R. § 114.2(b)(1)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter concerns allegations that Karen Harrington and Karen Harrington for Congress and Joseph Schirra, in his official capacity as treasurer ("Committee"), violated 2 U.S.C. § 439a, the personal use provision of the Federal Election Campaign Act of 1971, as

¹ Karen Harrington replaced Joseph Schirra as treasurer on March 11, 2011.

1 amended ("the Act"), by airing television ads in support of Harrington's candidacy that also
2 allegedly promoted her business, Rickey's Restaurant and Lounge. Specifically, the complaint
3 alleges that Harrington converted campaign funds to personal use because her campaign ads
4 promoted "a business establishment and products" that she had "an ownership interest in" and
5 from which she would "continue to receive personal and monetary gain." Complaint
6 at 3. However, based on the Committee's response and a review of the ad in question, we
7 conclude that the ad was campaign activity and did not constitute personal use of campaign funds
8 by the candidate. Accordingly, we recommend that the Commission find no reason to believe
9 that the candidate and Committee violated 2 U.S.C. § 439a.

10 **II. FACTUAL BACKGROUND**

11 Karen Harrington was a candidate for United States Congress from Florida's 20th
12 Congressional District.² Her campaign Committee aired a sixty-second television advertisement
13 entitled "Toddler Gets It; Debbie Wasserman Schultz Does Not," that promoted Harrington's
14 candidacy and criticized her opponent, Debbie Wasserman Schultz. The first forty seconds of the
15 advertisement features footage of Rep. Schultz and shows Harrington making critical statements
16 about Schultz's job performance in Congress. Harrington also discusses her own campaign
17 platform, including cutting taxes, reducing spending, and creating jobs. During the final twenty
18 seconds of the advertisement, Harrington discusses her background as a business owner while
19 images of her business, Rickey's Restaurant and Lounge ("Rickey's"), briefly appear on the
20 screen. The images, which include two photographs of signs displaying the business

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² Harrington lost the 2010 General Election to Debbie Wasserman Schultz; Schultz won with 60.2% of the vote, while Harrington received 38.1% of the vote. Harrington recently announced her candidacy for Congress for the 2012 election cycle. See *Karen for United States Congress*, <http://www.karenforcongress.com> (last accessed March 28, 2011).

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- 1 name and video footage of the inside of the restaurant, appear as insets on the screen for
2 approximately five seconds. The image on the screen then changes to Harrington holding a
3 bottle of Rickey's chicken wing sauce for approximately three seconds while she says that she
4 "make[s] the best chicken wings in South Florida."³ The advertisement is transcribed below.

On Screen	Voiceover
A toddler sitting on a sofa, petting his stuffed animal (elephant). He picks up a remote control and turns the tv on.	Instrumental music playing
A close up of Debbie Wasserman Schultz (DWS) speaking. The words on the tv read: "Rep. Wasserman Schultz (D) Florida" <ul style="list-style-type: none">• Member of Congress since Jan. 2005• House Committee on Appropriations Member• House Judiciary Committee Member At the bottom of the screen it reads: "Jobs Spin Doctors"	DWS speaking: "We will create more jobs in this year than the entire eight years of the presidency."
A toddler sitting on a sofa.	The toddler puts his hands over his eyes and says "Oh no."
A split screen with Fox 5 interviewer on one side and DWS on the other side.	DWS speaking: "People are feeling good about how things are going." The interviewer says "Last question."
A toddler sitting on a sofa.	The toddler reaches for the screen and says "stop."
DWS being interviewed on Politicstv.com	DWS speaking: "And Speaker Pelosi is making history in more than one way."
The toddler picks up the remote and changes the channel.	

³ A DVD with the advertisement in question was submitted along with the complaint. The advertisement is available for viewing in the Commission's Voting Ballot Matters folder.

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Karen Harrington (KH) speaking. Inset pictures of DWS and Nancy Pelosi appear on the screen. The words "Karen Harrington For Congress" are at the bottom.	KH speaking: "We know what Debbie Wasserman Schultz cares about. Plensing her mentor Nancy Pelosi and moving up the Democratic ranks in Washington."
KH speaking. Later, these words appear: "cutting taxes, reducing spending, creating jobs."	"Here's what I care about: cutting taxes, reducing spending, creating jobs."
KH speaking. An inset of a tv with DWS appearing on different shows. These words appear under the tv: "Debbie Wassermann Schultz knows how to get on TV."	"As a Washington insider, Debbie Wasserman Schultz knows how to get herself on tv."
KH speaking. An inset with video footage of the inside of restaurant and an inset of photographs of two signs displaying the name of Rickey's restaurant appear on the screen. At the bottom of the screen these words appear: "create jobs, live within a budget, stretch every dollar."	"But as a restaurant owner, I know how to create jobs, live within a budget, stretch every dollar."
KH speaking and holding a bottle of chicken sauce. At the bottom of the screen it reads "Paid for by Karen Harrington for Congress. Approved by Karen Harrington."	"And make the best chicken wings in South Florida."
KH speaking.	"I'm Karen Harrington and I approve this message."
A toddler holding his stuffed animal (elephant) and smiling.	The toddler says "I like chicken"
The frame reads: "This message is approved by: Reublican [sic] Toddlers Committee. Paid for by Karen Harrington for Congress Inc." There is a picture of an elephant.	

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2 A review of Harrington's YouTube Channel reveals that the campaign produced a
3 second, shorter version of the same advertisement entitled "Harrington Cares," without images of
4 the toddler who appeared in the longer ad. We do not know exactly when the advertisements

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1 may have been broadcast on television, but they were uploaded to the Committee's YouTube
2 channel on October 13, 2010.⁴ The Committee's reports filed with the Commission disclose
3 disbursements totaling \$87,480.56 made to media vendor Jamestown Associates, in September
4 and October 2010, for campaign mailers, video shoots, and commercial air time. *See*
5 Committee's 2010 October Quarterly and Post General Reports. However, we do not know
6 which disbursements specifically relate to the advertisement in question.⁵

7 We located one advertisement for "Rickey's," and it appears to contain some of the same
8 video footage featured in Harrington's campaign ad at issue here. *RickeysGrill's Channel*,
9 <http://www.youtube.com/user/RickeysGrill> (uploaded to YouTube on September 2, 2010; last
10 accessed May 11, 2011). However, it is unclear whether Rickey's aired any other advertisements
11 before it began using this footage. Other videos we viewed on Harrington's YouTube Channel
12 reveal that Harrington frequently mentioned being a small business owner during the course of
13 her campaign, including when she announced her candidacy for the 2010 election.⁶ Harrington's
14 current campaign website also promotes her qualifications as a small business owner. *See, e.g.,*
15 *Karen Harrington Declares Candidacy for U.S. Congress in FL-20*, March 28, 2011,
16 <http://www.karenforcongress.com/press-room/harrington-declares-candidacy>.

⁴ The campaign ad subject of the complaint is no longer publicly available through Harrington's YouTube Channel (*Karen4Congress's Channel*, <http://www.youtube.com/user/Karen4Congress>), but can still be found at other locations on YouTube. *See, e.g., Weston Leaders' Channel*, <http://www.youtube.com/watch?v=b2cLtYJeXCg> (last accessed March 28, 2011).

⁵ The disbursements to Jamestown Associates include the following payments: \$6,170.58 on 9/13/2010 for "debt owed on mailer and video;" \$31,100 on 10/18/2010 for "Video shoot and commercial air time;" \$44,135 for "tv commercial air time;" and \$3,405 on 10/29/2010 for "campaign mailers, video shoot and commercial air time." *See* Committee's 2010 October Quarterly and Post General Reports. The Committee also disclosed disbursements to Shark Tank Media LLC and Facebook for Internet ads.

⁶ Although the videos are no longer available on Harrington's YouTube Channel, some of the relevant videos are still available at other locations. *See, e.g., Karen Harrington.wmv*, Theahariaank1's Channel, http://www.youtube.com/user/Theahariaank1#p/search/1/xc_sxtBys68.

1 The complaint alleges that Harrington converted campaign funds to her personal use
2 when she "regularly ran television advertisements promoting a business establishment and
3 products." Complaint at 3. The complaint argues that the "candidate's campaign must have
4 spent a significant and identifiable amount of money to include the 'b-roll' of the two different
5 clips of the Rickey's name as well as the two different bar scenes in the campaign commercial"
6 and alleges that one-third (twenty seconds) of the commercial promoted the candidate's business.
7 *Id.* at 4. According to the complaint, in addition to being aired on television, the advertisement
8 in question was also available on the Committee's website and on YouTube. *Id.*

9 The Committee submitted a response that explained that Jamestown Associates created
10 the ad in question and argued that the expenses for the ad were "in connection with a campaign
11 for Federal office."⁷ The Committee treasurer stated that "I have no reason to believe that Karen
12 Harrington would have made these payments to Jamestown Associates if not for her election
13 campaign." Response at 2.

14 Available information indicates that "Rickey's Restaurant and Lounge" has been a
15 family-owned business for over 35 years and has three locations in South Florida. *See About*
16 *Karen*, <http://www.karenforcongress.com/about-karen> (last accessed March 28, 2011). The
17 business has been incorporated in the State of Florida since 1980, and Harrington has been listed
18 as a corporate officer in the company's corporate documents since 2006. *See* Florida Department
19 of State, Division of Corporations, <http://www.sunbiz.org> (including corporate documents for
20 Rickey's Restaurant and Lounge, Inc. and Rickey's at Silver Lakes, Inc.). It is not clear what
21 percentage, if any, of the business belongs to Harrington. According to

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⁷ Karen Harrington did not submit a response to the complaint on her own behalf. The Committee's response was submitted by Mr. Schirra, the treasurer at the time the complaint was filed with the Commission.

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Harrington's campaign website, the candidate "has managed the business herself for almost 30 years."

III. LEGAL ANALYSIS

The Act prohibits any person from converting contributions to a Federal candidate to personal use. 2 U.S.C. § 439a(b)(1); 11 C.F.R. § 113.2(e). "Personal use" is defined as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." See 11 C.F.R. § 113.1(g); see also 2 U.S.C. § 439a(b)(2); 2 U.S.C. § 431(11) (defining "person" under the Act). Commission regulations list a number of purposes that would constitute personal use *per se*, but where a specific use is not listed, the Commission makes a determination, "on a case-by-case basis," whether an expense would fall within the definition for personal use. 11 C.F.R. § 113.1(g)(1)(i) and (ii). In previous matters, funds were considered converted by individuals to personal use when they were used to pay for personal expenses, such as Broadway show and football tickets, haircuts, credit card bills, and personal trainer payments. See, e.g., MUR 5962 (Istook for Congress) Conciliation Agreement; MUR 5895 (Meeks for Congress) Conciliation Agreement.

The Commission's "long-standing opinion [is] that candidates have wide discretion over the use of campaign funds." Explanation and Justification, *Expenditures; Reports by Political Committees; Personal Use of Campaign Funds*, 60 Fed. Reg. 7862, 7867 (February 9, 1995). "If the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use." *Id.* at 7863-64.

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1 According to the complaint, because the Committee paid for the advertisement at issue in
2 this matter and the ad mentions Rickey's Restaurant and Lounge, it ostensibly provided Rickey's
3 a benefit through its broadcast, and by extension, to Harrington, the part-owner of the business.
4 Complaint at 3. In addition, if the campaign spent money to produce the "b-roll" of the
5 restaurant footage, the complainant argues that the Committee provided a benefit to Rickey's
6 and, by extension, to Harrington, by providing this service to the restaurant. *Id.* at 3-4. However,
7 it is unknown how much Harrington, as part-owner of Rickey's, could have personally benefited
8 from the production and broadcast of the ad, or from the brief references to the business in the
9 ad. Further, the expenses related to the ad are not in the category of any *per se* violations of
10 personal use, such as football tickets or haircuts, where there exists a clear personal benefit to the
11 individual utilizing the funds.⁸

12 Instead, Harrington's use of campaign funds for the ad at issue appears to qualify as
13 "campaign or officeholder activities," as contemplated in the Commission's Explanation and
14 Justification. *Supra* at 7. The Committee's response makes clear that the ad was produced as
15 part of the congressional campaign by the campaign's media vendor, Jamestown Associates, and
16 the Committee denies that it would have paid the vendor "if not for [Harrington's] election
17 campaign" (Response at 2). Further, the content of the ad itself helps demonstrate that it is best
18 characterized as "campaign activity." Viewed in its entirety, it appears the ad sought to highlight
19 Harrington's experience or success as a local business owner in order to help her campaign, and

⁸ In addition to identifying *per se* examples of personal use, the "personal use" definition generally addresses situations where political committees absorb obligations or expenses of a candidate that exist irrespective of the candidate's campaign. See 11 C.F.R. § 113.1(g). However, in this instance, it is difficult to say whether Harrington's, or Rickey's, obligations for the costs of the advertisement at issue existed irrespective of the campaign. We have no information as to the number or frequency of ads that Rickey's may have broadcast prior to the campaign or that Rickey's somehow cut back on its advertising in anticipation that the Committee's advertising would subsidize Rickey's.

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1 not to promote her business.⁹ Specifically, the inserts showing images of Rickey's first appear
2 on a small portion of the screen next to a larger image of Harrington at the very moment she
3 informs viewers that she is a "restaurant owner" and that, as a result of her occupation, she
4 knows "how to create jobs, live within a budget [and] stretch every dollar." *See supra* at 4.
5 Accordingly, the images appear to have been primarily designed to amplify Harrington's
6 qualifications and positions, contrasting herself from her opponent. Harrington's tag line, "and
7 make the best chicken wings in South Florida," in context, appears to have served merely as a
8 humorous conclusion to the preceding discussion of her qualifications for political office.
9 Moreover, the reference to the Rickey's corporate name and product appeared for only five to
10 eight seconds of the 60-second ad. The Commission gives candidates wide discretion over the
11 use of campaign funds, and incurring expenses for production of campaign advertisements
12 generally falls within that discretion. *See 60 Fed. Reg. at 7867*. Because of the campaign focus
13 of the ad, it appears to be within the candidate's discretion to fund the ad.

14 Thus, because no campaign contributions appear to have been converted to personal use,
15 we recommend that the Commission find no reason to believe that Karen Harrington and Karen
16 Harrington for Congress and Karen Harrington, in her official capacity as treasurer, violated
17 2 U.S.C. § 439a(b).

18 We also considered whether the Committee's use of a restaurant photograph, video
19 footage, and commercial product was a prohibited corporate contribution from Rickey's to the

⁹ Typically, the Commission has addressed matters involving business advertisements that either mentioned or featured the business owner who was also a federal candidate and not matters, such as this, where a campaign ad features a business establishment. *See, e.g.*, MURs 5410 (Oberweis), 5517 (Stork) and 5691 (Whalen).

1 Committee in violation of 2 U.S.C. § 441b.¹⁰ The Commission has previously considered the
2 use of corporate names and trademarks, similar to the Rickey's logo at issue here, to be things of
3 value. *See* MUR 6110 (Obama Victory Fund); MUR 5578 (Wetterling for Congress); *see also*
4 MUR 6322 (Tommy Sowers) (Sowers for Congress Factual and Legal Analysis citing
5 MURs 6110 and 5578). Because the Act and Commission regulations prohibit corporations from
6 contributing anything of value to committees, or using their resources to facilitate contributions
7 to committees, a donation by a corporation of its name to a committee would constitute an
8 impermissible corporate contribution. 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f). Here,
9 Harrington arguably benefits from the restaurant's local name recognition or goodwill, which
10 may have given Harrington something of value, and it does not appear that the Committee
11 compensated Rickey's for the use of its corporate name or the footage.¹¹ However, because the
12 restaurant images appeared only briefly in the advertisement, it would be difficult to determine
13 what specific value the use of the name of this locally-owned business provided to the candidate.
14 Further, it is not uncommon for successful business owners to promote their credentials in
15 support of their campaigns for federal office. *See, e.g.,* MURs 6287, 6288 and 6297 (Liberatore
16 for Congress) (dismissing matter where candidate used his own company's letterhead for a
17 mailer to a local chamber of commerce describing his credentials and advocating his election,

¹⁰ Under the Act and Commission regulations, corporations are prohibited from making a contribution to a candidate's committee in connection with a Federal election, and candidates are prohibited from accepting or receiving corporate contributions. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b)(1). A "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i) and 11 C.F.R. § 100.52(a); *see also* 2 U.S.C. § 441b(b)(2) and 11 C.F.R. § 114.2(b)(1). "Anything of value" includes all in-kind contributions, including the provision of goods or services without charge or at a charge that is less than the usual and normal charge. *See* 11 C.F.R. § 100.52(d)(1).

¹¹ Although the Committee disclosed a number of payments to "Rickey's Grill" in its reports with the Commission, those payments were designated for the purpose of catering events. Additionally, the Committee's payments to media vendors do not specify whether they included compensation for use of the Rickey's footage or photograph.

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based on the likely insubstantial value of the letterhead and the apparent *de minimis* benefit it provided). Accordingly, we do not recommend that the Commission take any action as to any potential violation of section 441b of the Act.

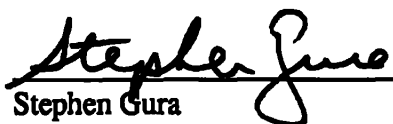
IV. RECOMMENDATIONS

1. Find no reason to believe that Karen Harrington and Karen Harrington for Congress and Karen Harrington, in her official capacity as treasurer, violated 2 U.S.C. § 439a(b).
2. Approve the attached Factual and Legal Analysis.
3. Approve the appropriate letters.
4. Close the file.


Christopher Hughey
Acting General Counsel

5/11/11
Date

BY:


Stephen Gura
Deputy Associate General Counsel for
Enforcement


Peter G. Blumberg
Assistant General Counsel


Ana J. Peña-Wallace
Attorney